FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH, NAGPUR

Second Appeal No. 69/2001

(Narayan Atmaram Patle **VERSUS** Muniraj Bhaduji Jambhulkar & 3 others **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Ghare, Advocate for the appellant.
Mr. Borkar, Advocate for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 20th August, 2007.

Heard the learned counsel for the parties.

The appellant is the original defendant no.3. A suit was filed by the plaintiff against the defendants for a mandatory injunction directing the defendants to demolish the construction made on the public lane/cross road on the eastern side of the plaintiff's property. According to the plaintiff, there was a cross road/public lane on the eastern side of the plaintiff's house and in view of the fact that the defendant had constructed illegally on this cross road/public lane, the easementary right of the plaintiff to have a free access of light and air was obstructed.

The defendant denied the claim of the plaintiff and pleaded that the defendant was the owner of the suit site and the suit site was not a public lane as pleaded by the plaintiff. The defendant no.3, therefore, sought the dismissal of the suit.

The trial Court on an appreciation of the material evidence on record came to a conclusion that

the plaintiff failed to prove that the disputed side was a public road. The Court further held that the plaintiff failed to prove that he had an easementary right of light and air through the public lane/cross road. The Court consequently dismissed the suit of the plaintiff.

In an appeal filed by the plaintiff against the judgment passed by the trial Court, the appellate Court reversed the findings recorded by the trial Court. The first appellate Court held that the plaintiff proved that the land on the eastern side of his house was a cross road or a public lane. The appellate Court further held that the defendant no.3/present appellant had failed to prove that he is the owner of the disputed land. The Court also observed that the access of light and air was obstructed due to the construction made by the defendant no.3 in the suit premises. The Court, therefore, reversed the decree passed by the trial Court and decreed the suit filed by the plaintiff by granting the mandatory injunction.

The findings recorded by the first appellate Court on all the points for determination are pure findings of fact based on a proper appreciation of the material evidence on record. The first appellate Court being the final fact finding Court had an opportunity to reappreciate the evidence and on reappreciating the same, the findings recorded by the trial Court were set aside.

No substantial question of law arises for

consideration in this second appeal. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE